

CMS Rescinds Emergency Waivers Related to Notice Prior to Discharge/Transfer, Care Planning, and Submission of Minimum Data Set. Maintains Waivers Related to Nurse Aide Training

On April 8, 2021, the Centers for Medicare & Medicaid Services (CMS) [rescinded](#) three emergency waivers of regulations in place since the beginning of the pandemic. The waivers that were rescinded were:

- **Advance notice requirement prior to discharge or transfer for the purpose of cohorting:** CMS has encouraged facilities to group residents based on COVID-19 infection status (cohorting) and issued waivers to facilitate this practice, including waiving the requirement residents receive notice before being transferred or discharged. CMS reinstated the advance notice requirement, and residents will once again be required to receive notice 30 days before the change or as soon as practicable, based on the length of their stay. Notably, CMS is only ending the waiver for the advance notice requirement. Waivers allowing facilities to transfer, discharge, or change rooms for the sole purposes of cohorting remain in effect.
- **Time requirements for baseline and comprehensive care plans:** CMS had waived the requirement that a baseline care plan is completed within 48 hours and a comprehensive care plan within seven days of admission for residents who were transferred or discharged for the purposes of cohorting. Facilities now must comply with these timeframes.
- **Timeframes for the submission of Minimum Data Set (MDS):** CMS had waived the timing requirement for submission of MDS. This waiver is now rescinded. CMS notes that the majority of facilities are already timely submitting this information.

Waivers Related to Nurse Aide Training

CMS is maintaining its waiver of training and certification requirements for nurse aide training. The waiver allows facilities to employ individuals beyond four months, even though they have not met the federal training and certification requirements. Before the pandemic, facilities were prohibited from employing nurse aides for more than four months if they had not met the 75-hour training requirement and certification requirements. CMS maintained the requirement that these individuals be competent to provide nursing and nursing-related services.

While maintaining this waiver, CMS also directs states to consider allowing some of the time these individuals have worked to count towards the 75-hour requirement. Additionally, CMS has not stated when the four-month cap will be reinstated; however, when reinstated, all staff working without meeting the training and certification requirements during this waiver period will have an additional four months to meet the requirements.